

Message Text

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ACTION EUR-25

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TO SECSTATE WASHDC 350

AMEMBASSY CANBERRA

USMISSION GENEVA

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E.O. 11652: N/A

TAGS: ETRD, OECD, AS

SUBJECT: OECD TRADE COMMITTEE WORKING PARTY (TCWP) ON GOVERNMENT
PROCUREMENT - AUSTRALIAN PROCUREMENT PRACTICES

REF: CANBERRA 3885

CANBERRA POUCH AMCONSUL BRISBANE

AMCONSUL MELBOURNE

AMCONSUL PERTH

AMCONSUL SYDNEY

1. SUMMARY. SUBJECT TO SUCH CORRECTIONS OR AMPLIFICATION
AS DEPT MAY WISH TO PROVIDE, MISSION OFFERS FOLLOWING
OBSERVATIONS ON POINTS RAISED REFTEL ABOUT AUSTRALIAN
GOVERNMENT PROCUREMENT PRACTICES. END SUMMARY.

2. PROCUREMENT PRACTICES AS DESCRIBED REFTEL WOULD
SEEM CONTRARY DRAFT INSTRUMENT UNDER CONSIDERATION BY
TC IN THREE WAYS. FIRST QUOTED SENTENCE FROM PARA 3
REFTEL, CONTAINS AT LEAST STRONG HINT THAT GOVERNMENT
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OR PURCHASING ENTITIES HAVE DISCRETION IN DETERMINING

WHICH "MAJOR PURCHASES" SHOULD OR SHOULD NOT "INVOLVE OVERSEAS SUPPLIERS." SUCH GENERAL DISCRETION, WHICH WOULD SEEM TO PERMIT DISCRIMINATION IN FAVOR OF NATIONAL SUPPLIERS AGAINST FOREIGN SUPPLIERS, WOULD CLEARLY BE CONTRARY TO TC DRAFT INSTRUMENT AS IT NOW STANDS. SECOND CONFLICT ARISES FROM STATEMENT THAT WILLINGNESS OF OVERSEAS SUPPLIERS TO INCLUDE SUBSTANTIAL PROPORTION FOR AUSTRALIAN PARTICIPATION IN PROCUREMENT ORDER MAY BE SIGNIFICANT FACTOR "IN DECIDING THE AWARD OF ORDER". INFERENCE IS THAT, OTHER THINGS BEING EQUAL, PREFERENCE WOULD BE GIVEN TO FOREIGN BIDDERS ALLOWING GREATEST DEGREE OF AUSTRALIAN PARTICIPATION IN CONTRACT. THIS WOULD TEND TO OPEN WAY TO DISCRIMINATION AS BETWEEN FOREIGN SUPPLIERS ON GROUNDS OTHER THAN PRICE, QUALITY, DELIVERY DATES, SERVICING AND OTHER OBJECTIVE CRITERIA AND HENCE BE CONTRARY TO TC DRAFT INSTRUMENT AND GATT. FINALLY, QUOTED PORTION OF MANUAL IN PARA 3, REFTEL, GIVES FOREIGN BIDDERS A FORM OF CONDITIONAL ACCESS TO AUSTRALIAN PROCUREMENT CONTRACTS, WHICH IS ALSO CONTRARY TC DRAFT INSTRUMENT.

3. MAIN PROVISION OF DRAFT TC INSTRUMENT WHICH MISSION BELIEVES COVERS AUSTRALIAN OFFSET POLICY IS PARA 9, TFD/TD/720:

"IN ACCORDANCE WITH THIS INSTRUMENT, GOVERNMENTS SHALL BASE THEIR PURCHASING POLICIES, PROCEDURES AND PRACTICES ON THE PRINCIPLE OF NON-DISCRIMINATION AGAINST FOREIGN PRODUCTS OR SUPPLIERS. TO THIS END THEY SHALL ENSURE THAT WITHIN THE SCOPE OF THIS INSTRUMENT PURCHASING ENTITIES COMPLY WITH THE FOLLOWING PROVISIONS AND THAT, IN PARTICULAR, THESE ENTITIES SHALL TREAT FOREIGN AND DOMESTIC PRODUCTS OR SUPPLIERS IN A NON-DISCRIMINATORY FASHION IN SOLICITING AND CONSIDERING BIDS AND AWARDING CONTRACTS." WORTH NOTING THAT, ACCORDING TO SECRETARIAT, JAPAN, NEW ZEALAND AND US DELS TO TCWP ON GOVERNMENT PURCHASING HAVE SUGGESTED INSERTION OF "AND BETWEEN" BETWEEN "AGAINST" AND "FOREIGN" IN FIRST SENTENCE OF ABOVE PARAGRAPH, WHICH WOULD MAKE DRAFT INSTRUMENT MORE CLEAR ON QUESTION OF DISCRIMINATION BETWEEN FOREIGN BIDDERS. FRENCH AND LIMITED OFFICIAL USE

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CANADIAN DELS HAVE OPPOSED THIS CLARIFICATION ON GROUNDS THAT POINT ALREADY ADEQUATELY COVERED BY GATT. IN MISSION'S VIEW, SECOND SENTENCE OF ABOVE PARAGRAPH COULD BE INTERPRETED AS STIPULATION AGAINST DISCRIMINATION BETWEEN FOREIGN BIDDERS.

4. WOULD APPRECIATE COMMENTS ON FOREGOING POINTS BY WASHINGTON PARTICIPANTS IN TCWP WHO ARE MORE FAMILIAR

WITH NEGOTIATING HISTORY OF TC DRAFT INSTRUMENT.

5. MISSION BELIEVES AUSTRALIAN PARTICIPATION IN OECD GOVERNMENT PROCUREMENT EXERCISE COULD HAVE CONSTRUCTIVE, PERHAPS MODERATING, INFLUENCE ON GOA POLICIES PARTICULARLY IF MAJOR MEMBER COUNTRIES MOVED FAIRLY QUICKLY TO ADOPTION OF OPEN, NONDISCRIMINATORY, ENFORCEABLE CODE.

6. SUGGEST DEPT REPEAT REFTTEL TO US MISSION GENEVA.GDS BROWN

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